

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 10,602  
 )  
Appeal of )

## INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

## FINDINGS OF FACT

1. The petitioner is a twenty-nine-year-old woman who has a bachelor's degree in psychology which she earned in 1985 and some graduate course credits. Following her graduation, she worked in a mental health residential treatment center, first as a staff member, then as an assistant director and finally as a co-ordinator earning \$26,000.00 per year. She was fired from the job in September of 1990. Since early 1991, the petitioner has been employed as a salesperson in a video store and a Department store where she works a total of twelve to thirteen hours per week from which she earns approximately \$80.00 to \$90.00 gross. The Disability Determination Service has not ruled and the Department does not argue that the petitioner's current employment is substantial or gainful for the purpose of assessing her disability claim.

2. The petitioner testified that she has had emotional problems since she was a teenager but has usually been able to compensate for them and succeed at her endeavors. However, her ability to cope began to deteriorate when she had a "nervous breakdown" in November of 1989 and again in March of 1990. In May of 1990 when she returned to work she found that she was unable to remember her duties or perform her job. She felt tired and overwhelmed all of the time and felt that it was particularly difficult to deal with mentally ill persons as required by her job. After she was terminated from her job she tried some "menial" jobs and went to a few job interviews but was unable to "stay clear enough" to succeed at those, even though she has been engaged in counseling since she lost her job. She is involved in a twelve-step recovery program for her eating disorder and for her dependency on anti-depressant drugs. Since moving to Vermont in January of 1991, she finally has been able to work for a few hours each week at a non-stressful job but does not feel she can do more than her current work load. Most of her energy goes into her recovery and attempts to rehabilitate herself both emotionally and vocationally. Through Vocational Rehabilitation she has been attending counseling and taking courses in nutrition and sign language at a community college. She lives in an apartment with a roommate and is able to take care of herself and manage her life as long as she does not introduce stressful elements

into it. She described returning to a full time job as an "incredibly stressful" event and does not feel that she can do that at present. While she says she is better than she was during her hospitalization, she still is confused and disoriented, finds it difficult to concentrate, and is plagued with disturbing thoughts and delusions. The petitioner's testimony is found to be entirely credible and is supported by the medical evidence.

3. The medical evidence shows that the petitioner has suffered for many years from recurrent bouts of major depression, an atypical eating disorder and what has been described as a borderline personality disorder. She has gained a significant amount of weight (she was close to three hundred pounds at one point) and has been hospitalized on at least two occasions for treatment of her mental illness, including a nine week stay following an attempted suicide at age fifteen and a five week hospitalization about two years ago during which she was treated for major depression, obesity and a mixed personality disorder. She has been in outpatient treatment of different types for many years. During her last hospitalization which was for six weeks in 1990, she was described as anxious, and depressed with poor insight and judgement. There was concern that she intended to mutilate herself and would act out once any pressure was put on her due to her borderline personality traits. Although she is intelligent and educated, she was described by the hospital psychologist as being moody,

emotionally inappropriate, egocentric, immature, manipulative and lacking in psychological endurance and stamina. He described her link to reality as "tenuous" and feared that the above traits would interfere with her attempts to work.

4. Following her discharge, the petitioner was treated for about six months by a psychotherapist. During this time she was fired from her job. That therapist stated:

Her course of treatment with me has focused primarily on her recovery from bulimia. [Petitioner] has also been seen by the psychiatrist with whom I work for the purpose of monitoring the depression and managing any medications she may need.

In the past thirteen weeks, [petitioner] has come regularly for counseling and has followed the aftercare plan as recommended by Glenbeigh. Her return to work has not gone smoothly and has been the source of considerable stress; she has spoken often of wanting to be able to devote more time to her recovery program until she feels well grounded in that process. [Petitioner] also continues to have bouts with depression, although the worst of it seems to have been alleviated. She also recently discovered that she is recovering from mononucleosis, a condition she did not realize she had. The history of depression and bulimia combined with a more recent bout with mono has left [petitioner] with her resource supply somewhat depleted. It is my belief that with further therapy and continued use of the program of Overeaters Anonymous, [petitioner's] prognosis is very good.

5. In late 1990, the petitioner was thoroughly evaluated by a psychologist with regard to her intellectual abilities, vocational aptitudes and interests, and educational achievement for purposes of assistance from the Division of Rehabilitation Services in Connecticut where she then lived. Those tests showed that the petitioner has

superior verbal skills and good math, reading and spelling skills. The psychologist also determined, however, that the petitioner suffers from a borderline personality disorder, atypical eating disorder and major depression. That psychologist concluded:

This woman, despite a recent career set back, has made personal gains in attempts to overcome addictive problems. She appears to be emotionally ready for a change of occupations, considering that her long-standing exposure to constant mental health challenges in managing group home residents, has become unsettling. Her personal history, which includes a troubled childhood/adolescence, has heightened her sensitivity to interpersonal conflict; managerial responsibility in a field where subjectivity and ambiguity enter so much into routine decision making, has come to generate undue stress for her.

[Petitioner's] verbal intelligence and expressive capacities are strengths which should serve well in retraining. Test results identify alternate helping professions which appear to be reasonable predictors of satisfaction. Continuing efforts in her therapeutic endeavors will increase her chances for successful vocational rehabilitation.

6. In early 1991, the petitioner moved to Vermont and began working at the two part-time sales jobs described above. She joined an eating disorders group which was supervised by a professional counselor. He reported in a letter dated May 14, 1991 that:

[petitioner] is making considerable efforts in pursuing recovery, attending Overeaters Anonymous meetings daily, and maintaining a relationship with an OA sponsor as part of that group format. She has looked diligently for part time jobs, and is aware of the need for stability and structure in her daily life as she begins to probe and interact with very painful material from her past now surfacing. By our agreement, [petitioner] pays one quarter of the regular \$20 fee to attend the group. It is clear to me that she needs the steady support which the group therapy meeting offers.

7. At the suggestion of her eating disorder counselor, the petitioner started individual therapy with a licensed psychologist which she continues to the present. It was this therapist's current opinion that the petitioner is limited in her ability to work. She expressed the opinion that the petitioner is "moderately" limited with regard to all facets of understanding and memory, sustained concentration and persistence, social interaction and adaptation to work settings. She rated her as "markedly" limited with regard to maintaining attention and concentration for extended periods and with regard to the ability to complete a normal workday and workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods. Her current treating therapist explained further that:

[Petitioner] is often confused and overwhelmed by basic instructions and daily tasks. She struggles with disturbing auditory and visual hallucinations, and often must stop what she is doing when these occur. [Petitioner] has dissociative tendencies and can become self-abusive or suicidal when under stress. She also struggles with food addictions and obsessive thought patterns.

The evaluation of the petitioner's current treating therapist is uncontroverted in the medical evidence and adopted as a findings of fact as to her medical condition.

ORDER

The decision of the Department is reversed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

The medical and other evidence shows that the petitioner has symptoms and resulting restrictions which either meet or equal in severity those found in the listing of disability impairments under affective disorders, particularly with reference to paragraphs A.1.(b)(e)(f)(g) and (i) and B. (3) and (4).

12.04      Affective Disorders:

Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:

- a. Anhedonia or pervasive loss of interest in almost all activities; or
- b. Appetite disturbance with change in weight; or

- c. Sleep disturbance; or
- d. Psychomotor agitation or retardation; or
- e. Decreased energy; or
- f. Feelings of guilt or worthlessness; or
- g. Difficulty concentrating or thinking; or
- h. Thoughts of suicide; or
- i. Hallucinations, delusions or paranoid thinking; or

2. Manic syndrome characterized by at least three of the following:

- a. Hyperactivity; or
- b. Pressure of speech; or
- c. Flight of ideas; or
- d. Inflated self-esteem; or
- e. Decreased need for sleep; or
- f. Easy distractibility; or
- g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
- h. Hallucinations, delusions or paranoid thinking;

OR

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

B. Resulting in at least two of the following:

- 1. Marked restriction of activities of daily living; or
- 2. Marked difficulties in maintaining social functioning; or
- 3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or
- 4. Repeated episodes of deterioration or decompensation in work or work-life settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).



As the petitioner's condition meets or equals the listings and has lasted or is expected to last for a continuous period of at least twelve months, she must be determined to be disabled. 20 C.F.R. § 416.926.

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